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Office Supreme Court, U.S.
FILED
MAR 17 1961
JAMES R. BROWNING, Clerk

In The
Supreme Court of the United States

No. 821

JOE "REID" HOLT AND ROBERTA HOLT,
Appellants,
VERSUS
STATE OF OKLAHOMA,
Appellee.

On Appeal from the Court of Criminal Appeals of the State of Oklahoma

STATEMENT AS TO JURISDICTION

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JOE "RED" HOLT AND ROBERTA HOLT,

Appellants,

VERSUS

STATE OF OKLAHOMA,

Appellee.

On Appeal from the Court of Criminal Appeals of the State of Oklahoma

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STATEMENT AS TO JURISDICTION

Appellants in the above case have filed this Appeal from the Final Order and Judgment of the Court of Criminal Appeals of the State of Oklahoma entered on August 3, 1959 affirming the Order and Judgment of the Court of Common Pleas, dated February 24, 1959, convicting ap-

pellants of the crime "illegal possession of intoxicating liquor." This crime no longer exists as such under the Statutes of the State of Oklahoma. Title 37, Okl. Stat. Ann. contains the prohibitionary laws of the State of Oklahoma which were repealed by a vote of the people subsequent to the conviction of the appellants herein. In fact this is the last case to be prosecuted in Oklahoma under the Statute now repealed. The Court of Criminal Appeals did make one modification of the decision or order of the Court of Common Pleas of Oklahoma County, State of Oklahoma. The Court of Common Pleas ordered the appellants sentenced to three months in jail and pay a fine of $500.00 each. The Court of Criminal Appeals modified this sentence by reducing the amount of time to be served in jail from three months to six weeks, and reducing the amount of fine to be paid from $500.00 to $250.00.

OPINIONS BELOW

The Court of Common Pleas of Oklahoma County, which was the original trial court, issued no opinion in this case but rather filed a Journal Entry.

The Court of Criminal Appeals of the State of Oklahoma first dismissed this case on appeal for the reason that it was filed out of time. However, upon a Petition for Rehearing, the court vacated said Order dismissing the case, and considered the case upon its merits. The Opinion of the appeal court upon the merits of the case, was handed

down on August 3, 1959. It should be noted that considerable litigation upon subsequent Petitions for Rehearing were had in the appeal court after its Order of August 3, 1959.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The appellants are husband and wife. They were tried jointly before a jury of twelve person, severance having been denied by the Court of Common Pleas of Oklahoma County for the reason that Application for Severance was not made until after the jury was impanelled. The Statutes of the State of Oklahoma provide for great discretion upon the part of the court on whether or not severance is granted. The question which forms the basis for invoking jurisdiction of the Supreme Court of the United States is one of the illegal search and seizure in violation of the rights of the appellants as guaranteed or protected by Amendment IV of the Constitution of the United States. This question was first raised in the Court of Common Pleas of Oklahoma County January 9, 1959 by way of filing, on behalf of the appellants, "Motions to Suppress the Evidence" which Motions were heard and overruled by said court.

STATEMENT OF THE CASE

On November 17, 1958, Deputy Sheriff, E. A. Capshaw, of Oklahoma County, Oklahoma, had prepared and filed in

the Office of Justice of Peace felony charges against the appellants. These charges were later dismissed. Deputy Capshaw left the warrants for arrest at the Sheriff's Office as he was going to Guthrie, Oklahoma, a City located some thirty miles North of Oklahoma City, Oklahoma.

On the way to Guthrie, Oklahoma, the appellants' home could be passed so that Officer Capshaw decided to drive by and, as testified, to "see if he could see any life about the house". The evidence was that the appellants spent a great deal of time out of State. As Officer Capshaw was passing the appellants' home, located at 1800 NE 65th Street, he saw the appellant, Joe "Red" Holt, and another party standing in the garage of the Holt home, and the door of the garage was open. The testimony was that Mr. Capshaw, the Officer, stopped his autombile, turned it around, and drove back to the Holt home where he found the garage door closed. The Officer knocked upon the door, and the door was opened by the appellant, Joe Holt. The testimony of Capshaw, as revealed by the record, is * * * "I then went up and knocked on the door—I didn't kick on it. I knocked on it—and Red (Red is the appellant, Joe Holt) opened the door. He was the only one in the garage that I had seen. And I said 'What's goin' on?' 'Oh, he said, I told that idiot, that was you and you probably wouldn't have stopped if he hadn't jerked that door down.' Officer Capshaw said, 'Well, things do happen, don't they?' "

The record further shows that considerable conversation took place between Officer Capshaw and the appellant, Joe "Red" Holt. During said conversation, Officer Capshaw proceeded to walk into the garage where he observed two automobiles, and he proceeded to look into these automobiles and observed what he thought was packaged intoxicating liquor. The evidence is clear and not disputed that at no time during this conversation did Officer Capshaw place the appellant, Joe Holt, under arrest. The appellant, Roberta Holt, was not at home at this time.

After the conversation with Holt, Officer Capshaw radioed the Sheriff's Office, and the Sheriff and two other Deputies came to the appellants' home. The Sheriff asked Officer Capshaw, upon his arrival at the Holt home, if he told Joe Holt about the felony warrants which had been filed in the Justice of Peace Court. Capshaw answered "I was waiting until you arrived", at which time the Sheriff instructed Deputy Lynch to go into the Holt home, where both of the appellants were at this time, and inform them that they were under arrest. The appellants were taken to the County Jail and were not informed as to what they were arrested for until Deputy Lynch told them about the felony warrants while taking them to the County Jail in his automobile.

It is not in dispute that Officer Capshaw had no warrant to search the property of the appellants. The State of Oklahoma contends that the Officer had a right to search

the premises of the appellants because he had knowledge of the existence of a felony warrant for the arrest of the appellants. The appellants contend that said search and seizure was illegal for the reason that no search warrant existed, and for the further reason that the search was made by Officer Capshaw before the appellants were informed that they were under arrest, and before they were actually arrested.

The State attempted to justify this conduct upon the part of Officer Capshaw by saying that since he had knowledge of the felony warrants, he had a right to enter upon the premises of the appellants, and what he observed upon entering was a legal search. The appellants contend that, under the holdings of the Supreme Court of the United States, where no search warrant exists, even though there does exist a felony warrant, any search made previous to the arrest of the appellants herein, or either of them, constituted an illegal search. Officer Capshaw testified that because Mr. Joe Holt was doing so much talking he had not had time or an opportunity to tell Mr. Holt about the felony warrants or to place him under arrest, but the testimony reveals that Officer Capshaw did have time to carry on his part of the conversation with Mr. Holt.

We contend that Officer Capshaw should have placed Mr. Holt under arrest by virtue of the existence of the felony warrants when the garage door was first opened by Mr. Holt; that any delay in the arrest of Mr. Holt was done

purposely to give the Officer an opportunity to observe the premises and attempt to justify, upon legal grounds, such search.

OPINIONS IN SUPPORT OF THE APPELLANTS PROPOSITION

PROPOSITION

When an officer of the law knows that there exists a felony warrant for the arrest of a certain individual though he does not have the warrant with him but rather it is in the office of the Sheriff of the County, and the officer knocks upon the door of a home and the individual that opens the door is the individual sought to be arrested and the individual whose arrest is covered by the felony warrant, and the officer engages in conversation with the individual but at no time mentions the felony warrant which is unknown to this individual, and the officer makes no arrest of this individual, and the officer proceeds to go on into the garage and there he sees packaged intoxicating liquor the possession of which is illegal but has no relationship to the crime for which the felony warrant was issued, is the officer's search of the home of this individual without making an arrest legal? And is the evidence obtained by said search admissible in evidence against the individual for a separate and distinct crime?

Many cases hold that a search without a search warrant is justified where lawful arrest has been made. *United States* v. *Lee*, 83 F. 2d 195. *Beard* v. *United States*, 82 F. 2d 837. *United States* v. *Fleck*, 71 F. Supp. 110.

There are cases that also hold that to make a search legal without a search warrant, there must be a legal arrest. *United States* v. *Setaro*, 37 F. 2d 134.

In *Paper* v. *United States*, 53 F. 2d 184, the Court said: In search for accused upon property for the purpose of arresting the accused, officers found liquor, said search was legal. However, in the case before the Court at this time, it was not necessary for the officer to search for the accused. The accused opened the door for the officer and stood in the door and engaged in conversation with the officer.

The general rule concerning whether or not the search is illegal seems to be "After one has been placed under arrest, the officer has a right to search his person and immediate presence without the necessity of procuring a search warrant." *Sallee* v. *State*, 17 P. 2d 520. *Loflin* v. *State*, 62 P. 2d 664. *King* v. *State*, 121 P. 2d 1017. *Smith* v. *State*, 4 P. 2d 1076. These cases are all Oklahoma cases, and sustain the above-stated rule.

In the case before the Court at this time, no legal arrest was made previous to the search by the officer, and the accused was not arrested until some 30 or 40 minutes after the search was made.

Sugarman v. *United States*, 35 F. 2d 663:

> "The defendants Sugarman and Purdue were approached while sitting in a parked automobile, and it is contended in their behalf that the Court erred in admitting evidence found on search of the automobile."

The Court held the right of the officer to arrest the defendants for a felony under the facts disclosed by the record, does not admit of a serious question, and if the arrest was legal, the officers had a right as an incident to the arrest, to search the automobile in which the defendants were seated. See also *Marron* v. *United States*, 275 U.S. Reports 192.

United States v. *Harnish*, 7 F. Supp. 305. Search of room where radio set was being unlawfully operated and seizure of radio set and pistol found therein after operator was legally arrested for operating unlicensed station, held justified.

ARGUMENT

The argument of the appellants, simply stated, is that this Court should take jurisdiction and consider this case upon its merits because it presents the serious question of violation of the appellants' rights as protected by Amendment IV to the Constitution of the United States.

The appellants state that the evidence used in this case was illegally obtained because it was obtained by an illegal search. There is no dispute over the existence of a search

warrant. There was no search warrant. There is no dispute over the existence of a felony warrant for the arrest of the appellants. However, the appellants did not know of the existence of said felony warrant when the search was made, and the Officer who knew about the warrant, but did not have it in his possession, did not inform the appellants of the existence of said warrant and did not arrest the appellants previous to the time that the search was made and evidence obtained.

CONCLUSION

IT IS THEREFORE RESPECTFULLY SUBMITTED by the appellants that the United States Supreme Court should assume jurisdiction in this matter, and this case be considered upon its merits.

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MARCH, 1961.